

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6076 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
1-5 No

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KANTILAL MOHANLAL MODI

Versus

DISTRICT MAGISTRATE

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Appearance:

MR. V.H. PATEL ADVOCATE for Petitioner  
MR. H.L. JANI, AGP, for Respondent No. 1,2, 4  
MR. B.T. RAO, ADDL. CENTRAL GOVERNMENT STANDING  
COUNSEL for Respondent No. 3

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CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 24/09/98

ORAL JUDGEMENT

By way of this Special Civil Application the petitioner has challenged the order of detention dated 1.7.1998 passed by the District Magistrate, Sabarkantha, in exercise of powers conferred under sub-section (2) of Section 3 of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act,

1980 (hereinafter referred to as 'the Act') with a view to prevent him from acting in any manner prejudicial to the maintenance of supplies of essential commodities for Public Distribution Scheme, essential to the community. The petitioner has challenged the order of detention on various grounds. It is contended by Mr. V.H. Patel that the order of detention dated 1.7.1998 was approved by the State Government on 10.7.1998 but the said fact was not reported to the Central Government within a period of seven days as required by sub-section (4) of Section 3 of the Act.

A reply has been filed by Shri K.V.S. Rao, Under Secretary, Department of Consumer Affairs, Ministry of Food and Consumer Affairs on behalf of the Central Government. It is admitted in the affidavit that the order of detention was approved on 10.7.1998 by the State Government but the report thereof sent by them vide letter dated 6.8.1998 along with grounds of detention and other relevant material was received by the Central Government only on 10.8.1998. Mr. P.D. Shah Under Secretary to Government of Gujarat, Food, Civil Supplies and Consumer Affairs Department, Gandhinagar, has stated that the approval of the order of detention by the State Government dated 10.7.1998 together with other relevant material was sent through courier service on 11.7.1998. A telegram dated 15.7.1998 was received from the Central Government on 17.7.1998 stating that the grounds of detention were not received by them. The State Government in turn sent a fax on 20.7.1998 stating that the same has been sent to them on 11.7.1998 by Angadia (Courier Service) due to postal strike. Still the Central Government by telegram dated 3.8.1998 informed that the approval has not been reported. In view of this by speed post letter dated 6.8.1998 grounds along with other material was sent to them by courier service. On these facts it is contended by the learned A.G.P. that the delay on account of postal strike cannot be fatal in the case. He relied on a decision of the apex court in the case of NOOR SALMAN MAKANI VS. UNION OF INDIA & ORS. reported in JT 1993(6) SC 491.

I have considered the rival contention. The phrase 'report the fact' as employed in Section 3(4) of the Act came up for consideration before the Division Bench of this court in the case of JIVRAJBHAI V. PATEL VS. STATE OF GUJARAT reported in 1987(2) GLH 558. After considering the relevant provisions of the Act, the Court held that the report of the fact of the detention along with other documents must reach the Government within specified period. In the instant case it is not in

dispute that the report of the fact of approval has not been reported to the Central Government within seven days. The only question is as to whether non-observation of the procedural requirement of reporting the fact of approval on account of delay in postal delivery can save from vitiating the continued detention of the detenu.

I have gone through the judgement of the apex court in NOOR SALMAN MAKANI VS. UNION OF INDIA & ORS (supra). In the said case there was a delay in the matter of consideration of representation on account of the delay in postal delivery. The apex court excluded that delay and it was found that the was not undue. However, in the instant case the statutory requirements of reporting the fact of approval within a period of seven days which is found to be mandatory by the Division Bench of this Court in the case of JIVRAJBHAI V. PATEL VS. STATE OF GUJARAT (supra). It is further to be noticed that there is no postal delay in the instant case. It is the own says of the respondent that as there was a postal strike the report was sent through courier. Thus, in my view, there is an infraction of the provisions of sub-Section (4) of Section 3 of the P.B. Act which vitiates the continued detention of the detenu.

In view of the aforesaid this Special Civil Application is allowed. The order of detention dated 1.7.1998 is quashed and set aside. The detenu shall be set at liberty forthwith if not required in any other case. Rule made absolute. It is stated by the learned counsel that the detenu is in Sabarmati Central prison, Ahmedabad. Writ be sent to the said jail authorities.

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